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December 5, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of Ex Parte Communication, WC Docket Nos. 10-90,
14-58 and 14-259

Dear Secretary Dortch:

New York State, through its chief economic development agency, Empire State Development (“ESD”), hereby urges the Commission to grant its pending Petition for Expedited Waiver (“Petition”) in the above-referenced proceedings. The Commission will lose a meaningful opportunity to facilitate the deployment of broadband infrastructure in rural New York communities if it does not quickly grant the Petition. It is imperative that the Commission grant the waiver to allow New York to launch phase 3 of its broadband auction in the next few weeks.

Grant of the waiver would not be controversial given that the Petition is consistent with long-standing Commission precedent in which requesting states have received waivers from various universal service fund (“USF”) regulations. Indeed, the Commission has granted waivers of its regulations to states to ensure that they did not forfeit USF funds previously allocated by the Commission to them.¹ In these decisions, the FCC reasoned that the potential harm to consumers resulting from the

¹ See e.g., *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, CC Docket No. 96-45, Order, 16 FCC Rcd 5784 (2001).

loss of USF funds justified the waiver.² The Commission has also granted waiver requests to states whose laws and regulations conflicted with USF requirements.³ The FCC determined in these rulings that waiver of its USF regulations was warranted as implementation of the state requirements would provide for the more efficient administration of the USF program.⁴ Finally, the FCC has approved waiver requests of various states to allow them to use state programs instead of FCC-mandated USF processes.⁵ In these decisions, the Commission reasoned that grant of the waivers was justified because the states had implemented innovative programs that otherwise fulfilled the underlying purposes of the federal rules.⁶

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

John M. Beahn

Counsel to Empire State Development

² See *id.* (noting that the potential loss of one quarter of annual federal high-cost support would be “particularly egregious” to end users in the state).

³ See *e.g.*, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, Waiver Order, 27 FCC Rcd 5941 (2012).

⁴ See *id.* (reasoning that the waiver would avoid creating a “bifurcated process” of disparate federal and state requirements).

⁵ See *e.g.*, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, Order, 29 FCC Rcd 5965 (2014).

⁶ See *id.* (concluding that the waiver would “encourage states to develop systems” to implement federal objectives).